later overruled its former decision and decided that the act did fall within the statute. The defendant was then indicted under the statute. The trial court sustained a demurrer to the indictment and the state appealed. *Held*, that the judgment must be affirmed and the defendant discharged. *State v. Longino*, 67 So. 902 (Miss.).

For a discussion of how far an overruling decision may be retroactive, see NOTES, p. 80.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACT — AMOUNT OF COMPENSATION AWARDED WHERE THE WORKMAN HAD FORMERLY BEEN INJURED. — The plaintiff, having formerly lost one eye, lost the other in the defendant's employment and sued for the injury. The Michigan Workmen's Compensation Act provides different proportions of the employee's average wage where total and where partial disability results. In addition, some injuries, including the loss of both eyes, are expressly specified as total disabilities. The loss of one eye is a partial disability. *Held*, that the plaintiff was entitled only to compensation for partial disability. *Weaver* v. *Maxwell Motor Co.*, 152 N. W. 993 (Mich.).

Under a similar statute in New York, which specifies the loss of two hands and of one hand as total and partial disabilities respectively, the plaintiff, who had previously lost one hand, lost the other. He sued. *Held*, that he could recover for total disability. *Schwab* v. *Emporium Forestry Co.*, 153 N. Y. Supp. 234 (Sup. Ct. App. Div., 3d Dept.).

It is a well-established rule of common law that a person is liable for the damages which proximately result from his culpable act, no matter whether the condition of the injured person before that act caused the damages to be greater than they would otherwise have been. *Basham* v. *Hammond Packing Co.*, 107 Mo. App. 542, 81 S. W. 1227; *Jordan* v. *City of Seattle*, 30 Wash. 298, 70 Pac. 743. The Workmen's Compensation Acts, though they have done away with recovery in tort, clearly aim to supply relief to the injured employee regardless of the culpability of the employer. See Wambaugh, "Workmen's Compensation Acts," 25 HARV. L. REV. 129, 131. Again, the amount of compensation recoverable under the Acts is made proportional to the loss of earnings caused by the injury. *Sullivan's Case*, 218 Mass. 141, 105 N. E. 463. See 2 SEDGWICK, DAMAGES, 9 ed., § 675 *a*. Thus, they emphasize rather than alter the common-law principle of damages. *Lee* v. *William Baird & Co.*, 45 Scot. L. Rep. 717. As total disability certainly resulted from the accidents in the principal cases, it is submitted that the decision of the New York court is the more sound. Nor does this result work an injustice on the employer, since the wages earned by a previously disabled employee, and hence the compensation the employer must pay, are less than those he must pay to an able-bodied man.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACT — CHARACTER OF PAYMENTS — DUTY OF RECEIVER TO PAY PAST CLAIMS. — A receiver carrying on the business of an insolvent corporation petitions for instructions as to whether he need make workmen's compensation payments for injuries that happened before he was appointed. *Held*, that he must make the payments. *Wood* v. *Camden Iron Works*, 221 Fed. 1010 (Dist. Ct., D. N. J.).

At common law the workman's remedy would be in tort. Tort claims that arose prior to the receivership, the receiver is not commonly required to pay. *Easton* v. *Houston & T. C. Ry. Co.*, 38 Fed. 12. See 23 HARV. L. REV. 488. But receivers who carry on the business are required to pay in full antecedent debts of certain classes. *Fosdick* v. *Schall*, 99 U. S. 235. Chief of these are recent debts for operating expenses. *Drennen* v. *Mercantile Trust & Deposit Co.*, 115 Ala. 592, 23 So. 164. Payments under the Workmen's Compensation Acts are pretty clearly not tort payments. See *Interstate Telephone & Telegraph Co.* v. *Public Service Electric Co.*, 86 N. J. L. 26, 28, 90 Atl. 1062; *Trim*

Joint District School Board v. *Kelly*, [1914] A. C. 667, 675; BIRRELL, EMPLOYER'S LIABILITY, 83; Jeremiah Smith, "Sequel to Workmen's Compensation Acts," 27 HARV. L. REV. 235. Their true nature is to be discovered only from an examination of the statutes. The intention of the statutes was to throw on industry the cost of personal injury to workmen, on the theory that this cost is properly a part of the cost of production. See *Borgnis* v. *Falk Co.*, 147 Wis. 327, 374, 133 N. W. 209, 224; Wambaugh, "Workmen's Compensation Acts," 25 HARV. L. REV. 129, 130. See also 28 HARV. L. REV. 307. This being so, the payments, although the liability is contingent, are nevertheless to be classed as operating expenses, whether they are further classed as wages, or insurance, or a combination of the two, or enforced pensions, or taxes, or something given in lieu of wages. They should, therefore, be continued by the receiver. In the actual case this result was the more easily reached because of an unusual provision in the statute, that the payments shall go on while the business is being conducted during bankruptcy or insolvency. See N. J. P. L. 1911, 136.

MORTGAGES — FORECLOSURE UNDER POWER OF SALE — BILL FOR REDEMPTION — SALE PENDING BILL. — During pendency of a bill in the alternative, asking for cancellation because full payment except for usurious interest had been made, or for redemption, the mortgagee foreclosed under a power of sale. *Held*, that the exercise of the power of sale is subject to the equity of the bill. *Carroll* v. *Henderson*, 68 So. 1 (Ala.).

It is often urged that the filing of a bill to redeem will not suspend the power of sale since it would be giving the mortgagor a power to suspend or qualify the contractual right he has vested in the mortgagee, without the mortgagee's consent. *Stevens* v. *Shannahan*, 160 Ill. 330, 43 N. E. 350; 2 JONES, MORTGAGES, § 1906. See dissent in the principal case. It is clear, however, that the jurisdiction of equity to relieve against forfeitures in mortgages is always in substance a question of varying the agreement of the parties. 1 POMEROY, EQUITY JURISPRUDENCE, § 162. The power of sale in mortgages is undoubtedly an attempt to avoid the interference of the chancellor. 2 JONES, MORTGAGES, § 1764. Equity, however, is not completely ousted of its jurisdiction and should prevent an inequitable exercise of the power. Thus in the principal case it is no hardship on the mortgagee to suspend his power of sale "subject to the equity of the bill" since the sale will be invalid only in case the bill shows that it would be inequitable for him to exercise the power. *Ryan* v. *Newcomb*, 125 Ill. 91, 16 N. E. 878. *National Building & Loan Ass'n* v. *Cheatham*, 137 Ala. 395, 34 So. 383.

NEGLIGENCE — PROOF OF NEGLIGENCE — *RES IPSA LOQUITUR*. — The plaintiff while passing along the sidewalk was hit by a board falling from the defendant's house. He showed by his evidence that the board had been loose a long time and just why it fell. *Held*, that it was reversible error to give him the benefit of the "presumption" arising from the doctrine of *res ipsa loquitur*. *McAnany* v. *Shipley*, 176 S. W. 1079 (Kansas City Ct. of App., Mo.).

The doctrine of *res ipsa loquitur* is generally spoken of as warranting a "presumption" of negligence. *Byrne* v. *Boadle*, 2 H. & C. 722; *Price* v. *Metropolitan St. Ry. Co.*, 220 Mo. 435, 456, 119 S. W. 932, 936; 4 WIGMORE, EVIDENCE, § 2509. By this is meant nothing more than that the facts of the injury are sufficient to warrant an inference of negligence, but not that the jury is required to draw one. *Palmer Brick Co.* v. *Chenall*, 119 Ga. 837, 842, 47 S. E. 329, 330. See 2 CHAMBERLAYNE, EVIDENCE, §§ 1026, 1027. The doctrine is simply one of the quantity of circumstantial evidence required to enable the plaintiff to go to the jury. See 20 HARV. L. REV. 228, 229. The facts of the principal case clearly justify the application of the doctrine. *Kearney* v. *London, etc. Ry. Co.*, L. R. 5 Q. B. 411, L. R. 6 Q. B. 759. That the plaintiff showed